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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,896	10/08/2004	Martin Dottling	071308.1121 (2002P05746WO)	8560
86528	7590	05/12/2010	EXAMINER	
King & Spalding LLP 401 Congress Avenue Suite 3200 Austin, TX 78701			TRAN, PHUC H	
			ART UNIT	PAPER NUMBER
			2471	
			NOTIFICATION DATE	DELIVERY MODE
			05/12/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

AustinUSPTO@kslaw.com  
AustinIP@kslaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/510,896	<b>Applicant(s)</b> DOTTLING ET AL.	
	<b>Examiner</b> PHUC TRAN	<b>Art Unit</b> 2471	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 33-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 33, 35-36, 38 and 41 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 7471660. Although the conflicting claims are not identical, they are not patentably distinct from each other because of following:

- With respect to the claims, the Patent '60 discloses a method for adjusting the data rate of a data stream in a communication device such that the data stream is divided into at least one data block including transmission bits to be transmitted, comprising: forming the transmission bits from information-carrying input bits by an encoding process (see claim 1, lines 9-10 of Patent '60); removing specific transmission bits from a data block of the data stream for the adaptation of the data rate (see claim 1, lines of 15-16 Patent '60); removing the transmission bits according to a puncturing pattern; configuring the punctured pattern that 8 of 48 bits of the data block are punctured, and the 8 of 48 bits of the data block are bits 1, 2, 4, 8, 42, 45, 47 and 48 (see claim 5).

Regarding to claims, the Application has eliminated term "separately...; linking... matching a data rate..." It has been held that the omission of the element and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184 (CCPA). Also note Ex Parte Raine, 168 USPQ 375 (bd. App. 1969); omission of a reference element whose function is not need would be obvious to one skill in the art.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 33-34, and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger et al. (Pub. No. 2003/0221156) in view of .

- With respect to claims 33-34 and 36-37, Berger teaches a method for adjusting the data rate of a data stream in a communication device such that the data stream is divided into at least one data block including transmission bits to be transmitted (see Fig. 2), comprising: forming the transmission bits from information-carrying input bits by an encoding process (a data stream from a communications signals is encoded with outer code see abstract);

removing specific transmission bits from a data block of the data stream for the adaptation of the data rate (e.g. deleting at least one bit from each symbol to achieve a desired data rate see abstract); removing the transmission bits according to a dotting pattern (e.g. the puncture in page 2 paragraph 17). Berger fails to disclose configuring the dotted pattern that 8 of 48 bits of the data block are dotted, and the 8 to 48 bits of the data block are bits 1, 2, 4, 8, 42, 45, 47 and 48. But Berger teaches the puncture routines as Table 1-5 (pages 4-6). Thus, it would have been obvious to person of ordinary skill in the art at the time of the invention was made to understand the puncture/dotting pattern is the desired choice of inventor to select the puncture/dotting pattern in the communication device for encoding data.

- With respect to claims 38-39, Berger discloses the communication device is one of a mobile radio transmission device or mobile radio reception device (e.g. Fig. 1 shows the stations 12 and 14).

5. Claims 35 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger et al. (Pub. No. 2003/0221156) in view of Das et al. (U.S. Patent No. 7133688).

- With respect to claims 35 and 40, Berger discloses all the aspect of the claimed invention as set forth above but fails to teach wherein the transmission bits to be transmitted are transmitted via the HS-SCCH corresponding to the UMTS standard. Das discloses transmitting data via HS-SCCH (see col. 10, lines 25-28). Thus, it would have been obvious to a person of ordinary skilled in the art at the time of the invention was made to implement the transmitting data via HS-SCCH corresponding o the UMTS into Berger invention to transmit data in communication.

### ***Response to Amendment***

6. Applicant's arguments filed 9/25/2008; 5/5/2009 and 2/5/2010 have been fully considered but they are not persuasive.

In response Applicant's argument that "Examiner failed to explain why a person skilled in the art would selected exactly the combination claimed from 377348994 possible selection". Examiner respectfully disagrees with Applicant. Applicant admitted that "There are now very many options for how individual bit can be puncture ...which cannot all be investigated within a reasonable time", therefore the puncture patterns are

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well know in the art. Moreover, it is obvious to a person of skill in the art to try selecting a pattern can be matched with the claim invention. The claims do not disclose how to select a pattern but only disclose the pattern which is obvious to try by desirers.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHUC TRAN whose telephone number is (571)272-3172. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHI PHAM can be reached on 57127233179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/PHUC TRAN/

Primary Examiner, Art Unit 2471